

**IN THE COURT OF APPEALS OF IOWA**

No. 9-1032 / 09-1722  
Filed January 22, 2010

**IN THE INTEREST OF C.B.,  
Minor Child,**

**T.B., Father,  
Appellant.**

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Appeal from the Iowa District Court for Linn County, Jane F. Spande,  
District Associate Judge.

A father appeals from the order terminating his parental rights.

**AFFIRMED.**

Deborah Skelton, Walford, for appellant father.

Kristin Denniger, Cedar Rapids, for mother.

Thomas J. Miller, Attorney General, Kathrine Miller-Todd, Assistant  
Attorney General, Harold Denton, County Attorney, and Rebecca Belcher,  
Assistant County Attorney, for appellee State.

Melody Butz, Cedar Rapids, for minor child.

Considered by Vogel, P.J., and Doyle and Mansfield, JJ.

**MANSFIELD, J.**

Mike, the biological father of Craig (born 2006), appeals the juvenile court order terminating his parental rights pursuant to Iowa Code section 232.116(1)(h) (2009). We agree with the juvenile court that clear and convincing evidence shows Craig cannot be returned to Mike's custody, and that termination is in Craig's best interests. Accordingly, we affirm.

**I. BACKGROUND FACTS AND PROCEEDINGS.**

Craig has two older half-siblings, Julia (born 2000) and Nicholas (born 2001). During 2006, Mike was living with Emily, the mother of Julia and Nicholas and mother-to-be of Craig. After two founded reports of Mike physically abusing Nicholas, both Julia and Nicholas were removed from Emily and Mike.<sup>1</sup> When Craig was born in November 2006, he too was removed from the home and placed in foster care. Craig was adjudicated a child in need of assistance (CINA) pursuant to Iowa Code section 232.2(6)(c)(2).

In 2007 the children were allowed to come back to live with Emily and Mike under a trial home placement. However, in April 2008, Nicholas was found to have many bruises on and around his head. Emily had kept Nicholas from school for two days to try to keep the injuries from being discovered. Julia told DHS that Mike had been responsible for the bruising. Mike claimed, not believably, that Nicholas had caused the bruising to himself in the course of a

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<sup>1</sup> These children had a significant amount of prior involvement with the Department of Human Services (DHS) while Emily was living with Julia and Nicholas's biological father. The reported incidents included: (1) the biological father spanking Nicholas while he was a newborn in the neonatal intensive care unit; (2) a subsequent failure to provide needed medication for Nicholas; and (3) the biological father's sexual abuse of Julia and indecent contact as to Nicholas.

panic attack. The examining doctor indicated very emphatically that none of Nicholas's injuries could have occurred by him hurting himself. Julia also made allegations that Mike had sexually abused her. Mike was ordered to leave the home immediately.

Mike left Iowa for Florida and stayed there for a period of time. However, in July 2008, a service provider found Mike hiding behind a door in Emily's home when she appeared on an unannounced visit. Mike acknowledges he was hiding because he knew he was not supposed to be there. At the same time, the children were telling the service provider that Mike was in Florida, because they had been told to say that. At this point, the children were again removed from Emily and Mike and placed in foster care.

Since July 2008, Mike has been limited to supervised visits with Craig. Mike and Emily continued to have a relationship until February 2009, but took steps to keep it from being discovered from DHS. Emily concedes she was not being honest with DHS and has a long history of being untruthful. Emily appears to have finally broken off the relationship in February 2009. Mike has tried to resume the relationship since then, for example, by showing up at or calling Emily's employers, but Emily has resisted. Emily also testified that Mike has been physically abusive to her.

During 2009, Mike had approximately three-and-a-half months of psychiatric hospitalizations. Mike made suicidal threats after Emily broke off their relationship. At the time of the hearing, Mike was on disability and was receiving

treatment for a bipolar disorder.<sup>2</sup> He was living in a motel but said that he anticipated getting an apartment very soon. He acknowledged that his present living arrangement was not suitable for Craig. Mike has never provided any type of regular financial support for Craig.

Mike has received services including parenting classes, parenting skills training, anger management classes, and counseling. Nonetheless, except for the first incident of physical abuse, where he admits to spanking Nicholas too hard, Mike continues to deny that he physically or sexually abused Julia or Nicholas.

Craig does know Mike as his father, and there is a bond between them. Mike has generally kept up with his visitations with Craig.

Since early June 2009, all three children have been in the same foster home, which is considered a potential preadoptive placement. The children, who have some behavioral issues, have been doing better in that home.

Mike's mother and sister live together in Florida. A home study that was performed under Interstate Compact procedures indicated the suitability of their home. However, the DHS case manager expressed concern about leaving the children with Mike's mother because she denies that Mike could have been responsible for physical abuse of any of the children and does not have any concerns there. Neither the mother nor the sister testified at the termination hearing.

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<sup>2</sup> Mike also has a physical disability because he lost a leg in a train accident when he was sixteen.

In late June 2009, the State filed a petition to terminate all parental rights to Julia, Nicholas, and Craig. In early October 2009, the juvenile court held two hearings and took evidence on the petition. In November 2009, the juvenile court entered an order granting the petition pursuant to Iowa Code section 232.116(1)(h).<sup>3</sup>

Mike now appeals the termination of his parental rights to his biological son, Craig. In a well-briefed petition on appeal, Mike contends the juvenile court erred in finding clear and convincing evidence that Craig cannot be returned to Mike's custody at the present time. See Iowa Code § 232.116(1)(h)(4).<sup>4</sup> Additionally, he contends that termination of Mike's parental rights is not in Craig's best interests. See *id.* § 232.116(3)(c).

## II. ANALYSIS.

We review proceedings for the termination of parental rights *de novo*. *In re J.E.*, 723 N.W.2d 793, 798 (Iowa 2006). We give weight to the juvenile court's factual findings, but are not bound by them. *Id.* The State must prove the grounds for termination by clear and convincing evidence. *Id.* "Clear and convincing evidence" means there are no serious or substantial doubts as to the correctness or conclusions of law drawn from the evidence. *In re C.B.*, 611 N.W.2d 489, 492 (Iowa 2000). In addition, the paramount consideration in termination proceedings is the best interests of the child. *Id.*

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<sup>3</sup> In addition to terminating Mike's parental rights to Craig, the order also terminated the parental rights of Emily under Iowa Code sections 232.116(1)(f) and (h), and those of Julia and Nicholas's father under sections 232.116(1)(b), (e), (f), and (h). Their rights are not at issue here.

<sup>4</sup> Mike does not dispute that subsections (1), (2), and (3) of section 232.116(1)(h) have been met. Thus, he does not dispute that Craig is three years of age or younger, has been adjudicated CINA, and has been continuously removed from his parents' custody since July 2008.

Mike argues that Craig could have been placed with him within a week of the hearing, when Mike would have had a home of his own. (Mike agrees that the motel where he had been staying would not have been suitable, but maintains that he was about to get an apartment.) Upon our de novo review of the record, however, we share the juvenile court's view that Craig cannot be safely returned to Mike. The concerns run much deeper than the suitability of the physical living environment. Mike has committed acts of physical and/or sexual abuse against the other children, and there is no indication that he has adequately addressed the root causes of this conduct. Indeed, for the most part, he continues to deny the conduct. As the juvenile court put it, Mike is "at risk of causing injury when frustrated by the behaviors of any young child, including his own child."

In addition, we agree with the juvenile court that "Mike's recent and ongoing mental health issues also place Craig at imminent risk of neglect and denial of critical care." Mike has not demonstrated that he has satisfactorily dealt with those issues as they affect his own life, let alone the life of his three-year-old child. For example, just a week or two before the termination hearing, he was still contacting Emily's employer.

Mike also has not shown the ability to meet Craig's basic needs. For example, in his last two supervised visits before the hearing, it was reported on September 3, 2009, that he failed to check Craig's diaper which was "very wet" and on September 8, 2009, that he was "out of money until the 1st of October" and had to vacate the motel that day. Thus, during the supervised visit, Mike needed all of his possessions to be carried with him. The report concludes, "At

the end of the visit Mike asked if we could drop him off at Wal-Mart so we dropped him and his bags off at the . . . Wal-Mart and then I transported Craig back to day care.” This is not a suitable situation in which to place a three-year-old.

Mike urges that termination of parental rights is not Craig’s best interests. We disagree. At the time of the termination hearing, Craig had been away from his parents and in foster care for approximately fifteen months. Before then, his life had been punctuated by episodes where Mike abused Craig’s half-siblings or mother. We agree with the juvenile court that Craig and his half-siblings “desperately need and deserve to go forward with their lives with caretakers and custodians they can trust to physically and emotionally protect them from past and future harms.” See *J.E.*, 723 N.W.2d at 801 (Cady, J., concurring specially) (stating a child’s safety and the child’s need for a permanent home are the defining elements in determining a child’s best interests).

Mike maintains that even if Craig cannot be returned to his care, he and his half-siblings could be entrusted to Mike’s mother and sister in Florida. See Iowa Code § 232.117(3)(c). This is not an argument against termination per se. In any event, we agree with the juvenile court that these children are “in dire need of stability and certainty in placement that will be disrupted by a move, particularly a move out of state.” We also agree with the juvenile court’s observation that placement with Mike’s mother and sister would not be in the best interests of these children. The record indicates that, like Mike himself, the mother is in denial about the abuse that Mike has perpetrated. Placing the

children with Mike's mother and sister poses a serious risk that Mike would be involved with the children without adequate supervision and protection.

**III. CONCLUSION.**

For the foregoing reasons, we affirm the order terminating Mike's parental rights to Craig.

**AFFIRMED.**